

Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

CHRISTIE BOWERS,) Case No. C08-1768RSM
Plaintiff,)
vs.) DECLARATION OF GREGORY P.
ROBIN KLETKE and ROBIN COHEN) CAVAGNARO IN OPPOSITION TO
Husband and wife and the marital community) DEFENDANT'S MOTION FOR
Composed thereof,) MONETARY SANCTIONS
Defendants.)

Gregory P. Cavagnaro declares as follows:

1. I am attorney of record for Plaintiff in this action, have personal knowledge of the facts contained herein and am competent to testify thereto.

2. Shortly after filing this case Defendant's former counsel, Greg Murphy faxed a Stipulation and Order to extend the time for filing the Defendant's Answer to my office on or about December 12, 2008. I did not view the document until the following day. I then contacted Mr. Murphy and advised him that I was not in a position to stipulate to the extension; however I would not oppose a request to the Court for such an extension. Mr. Murphy advised me that because I had not "immediately responded" to the fax sent to my office, he had already drafted a Motion which

LAW OFFICE OF GREGORY P.
CAVAGNARO

1 would be filed seeking the extension. This exchange seemed to set the tone of my dealings with
2 Mr. Murphy. Based on the entries in Exhibit B of the Defendant's Declaration in Support of the
3 Motion for Sanctions, Mr. Murphy ended up billing a total of 6.9 hours for a total of \$1,782.00 for
4 actions related to obtaining an extension of time to file the Defendant's Answer. The charges, if
5 actually charged to the Defendants by Mr. Murphy are excessive and unreasonable. The basis
6 stated in the Motion for the extension is that there were "constraints" imposed by the upcoming
7 holidays and to allow adequate time to investigate the case. These charges, like so many others
8 allegedly incurred by the Defendants are simply not attributable to my actions. Rather they were
9 incurred by the Defendants based on the overzealous and predatory billing habits and practices of
10 Mr. Murphy. Attached hereto as Exhibit A is a true and correct spreadsheet I prepared which tracks
11 the information contained in Exhibit A and B of the Defendant's Declaration. For example, in the
12 left hand column, I have indicated the date of the time entry and indicate the individual who is
13 billing for their time e.g. GM is Greg Murphy and ACL and LM are Mr. Murphy's paralegal's. The
14 second column indicated the matter worked on based on Exhibit B of Defendant's Declaration. The
15 third column represents the alleged charges. The far right hand columns are my notes. On the first
16 page of the Exhibit, all "A" entries correspond with the Defendant's "A" entries and in this case,
17 relate to the charges surrounding the extension of time to file an Answer. Exhibit A of the
18 Defendant's Declaration does not necessarily correspond with the time entries contained in Exhibit
19 B.

20 3. Although I am forced to reference information attached to the Defendant's Declaration in
21 support of their motion, I must object to their attached Exhibit A and Exhibit B. The Declaration
22 states that Exhibit A is a true and correct copy of a spread sheet detailing expenses and fees. Who
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1 prepared the spread sheet and why does it have different information than what is contained on
2 Exhibit B? Defendants state that Exhibit B consists of "true and correct copies of time charges
3 incurred by Defendants regarding above referenced expenses". Neither assertion indicates that the
4 information was generated and provided by Mr. Murphy. In fact, Exhibit B seems to be
5 information arising out of a "cut and paste job" and there are obvious alterations of this
6 information, whatever the source. No records have been submitted which have been authenticated
7 by Mr. Murphy. We do not even know if the Defendants have paid the alleged charges, or have any
8 obligation to pay the alleged charges contained in their Exhibits. Based on the above, I object to the
9 admissibility of the Exhibits attached to the Defendant's Declaration under ER 804; ER 602; ER
10 801 (c) among others.

12 4. One of the next exchanges with Mr. Murphy involved the Plaintiff receiving SonoSite
13 documents per Plaintiff's subpoena. Upon receiving the documents from SonoSite, Mr. Murphy's
14 office contacted me and demanded copies of the documents I had received from SonoSite be
15 delivered to him at once. (See Exhibit B entries contained on Exhibit A attached). I advised Mr.
16 Murphy that I would provide him a copy as soon as I had an opportunity to copy the documents.
17 Mr. Murphy did not wait and instead appears to have obtained the documents directly from
18 SonoSite the following day. Why the defendants want to assess charges in connection with their
19 review of the SonoSite documents is perplexing and without merit.

21 5. It is true that responses to Interrogatories and Request for Production were not provided
22 to Mr. Murphy as required. It is also true that Mr. Murphy filed two Motions concerning the
23 discovery which were unopposed and not responded to due to lack of the receipt of ECF emails by
24 my office. The alleged charges by Mr. Murphy in connection with the Motions are unreasonable
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1 and outrageous. For example, Defendants allege that Mr. Murphy charged a total of \$6,401.00 for
2 the May 6, 2009 Motion to Compel. The Motion was slightly over 2 pages, and was unopposed.
3 However, the time entries leading up to the motion do not substantiate the claim that Mr. Murphy
4 spent all his time leading up to the Motion working on a Motion to compel. (See Exhibit A
5 attached). In fact many of the entries are obviously inflated and do reflect work on a Motion (See
6 Exhibit A attached). Likewise, the July 2nd Motion was similar to the May 6, 2009 Motion, and the
7 20 hours (\$6,538.00) that Mr. Murphy allegedly billed to the Defendants in connection with
8 "drafting" the motion is again unreasonable and excessive.

10 6. Mr. Murphy received the Plaintiff's responses to the Defendants Interrogatories on
11 September 11, 2009. However, the responsive documents were not provided to Mr. Murphy. This
12 is because Mr. Murphy's document production requests consisted of requests to Ms. Bowers to
13 produce her tax returns and her personal business records. Additionally, the Defendants were
14 seeking everything in Ms. Bowers possession related to her work as a Dog Agility official. In fact,
15 she is in direct competition with the defendants who are also Dog Agility officials. Ms. Bowers
16 knew that the requests for production were nothing more than a tactic to humiliate and discourage
17 her from continuing with the litigation. Therefore, she resisted producing the documents and did
18 not provide them to the defendants when requested. After further discussions with Ms. Bowers
19 about the need to produce the documents, she relented and provided me with approximately 6 large
20 boxes full of documents. I was overwhelmed by the voluminous amount of documents and alerted
21 Mr. Murphy in a November 5, 2009 letter that we were prepared to bring the documents to his
22 office. See a true and correct copy of the November 5, 2009 letter to Mr. Murphy attached hereto
23 as part of Exhibit B. Mr. Murphy declined to accept the delivery of the documents for inspection.
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LAW OFFICE OF GREGORY P.
CAVAGNARO

1 On November 6, 2009 I sent Mr. Murphy another letter concerning the production of the
 2 voluminous documents and inquired about scheduling depositions. A true and correct copy of the
 3 November 6, 2009 letter is attached hereto as part of Exhibit B. Pursuant to my discussions with
 4 Mr. Murphy, I delivered a full copy set of the documents to Mr. Murphy's office. On November
 5 13, 2009 I again wrote to Mr. Murphy seeking to schedule depositions. Mr. Murphy and I did not
 6 schedule depositions. In a December 2009 phone call from Mr. Murphy, we discussed his
 7 November 27, 2009 letter. With regard to the tax returns, Ms. Bowers had produced 6 years of
 8 returns. I advised Mr. Murphy that she did not have the additional years requested by Mr. Murphy.
 9 I also informed Mr. Murphy, consistent with Ms. Bowers responses that she was not in possession
 10 of particular emails viewed in secret by the Defendants. I explained to him that although we could
 11 identify the time and date of unauthorized access by the defendants, the particular emails contained
 12 in Ms. Bowers email in-box were not identifiable. Mr. Murphy did not like my answer or
 13 explanation and to this day, the defendants do not accept this fact. Notwithstanding having received
 14 full and complete answers and a voluminous amount of documents responsive to the discovery in
 15 December of 2009, Mr. Murphy continued to spend an unreasonable amount of time on Motions
 16 regarding the Plaintiff's discovery responses. Other than two missing years of tax returns which
 17 Ms. Bowers did not have, she had fully and completely responded to the Defendants discovery
 18 requests.

21 7. When Mr. contacted me on December 1, 2009 and asked me if we would enter into
 22 Stipulation to Stay discovery, I immediately agreed since we had been discussing the scheduling of
 23 depositions. I did in fact enter the stipulation to Stay Discovery and other deadlines related to the
 24 case. Even though I was cooperating with Mr. Murphy, it did not stop him from continuing to draft
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CAVAGNARO

1 and file Motions seeking dismissal, sanctions and a variety of other remedies against the plaintiff. I
 2 do not understand why Mr. Murphy did not seek to address the situation with me. His allegations
 3 of my failure to communicate with him are exaggerated and the time records clearly demonstrate
 4 and document several emails and calls between us. However, whenever Mr. Murphy engaged in a
 5 brief call or email, his bill would often reflect a substantial billing entry for a much greater duration
 6 than the activity would actually take. In later part of December 2009, Mr. Murphy contacted me
 7 and advised me that he had not received the documents produced pursuant to RFP No. 1. Although
 8 I had inspected the documents prior to them being delivered to Mr. Murphy and was certain he had
 9 received them, I had another set hand delivered to Mr. Murphy on December 22, 2009. A true and
 10 correct copy of the December 22, 2009 letter which was attached to the second production of
 11 documents responsive to RFP No1. is attached as part of Exhibit B hereto.
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13 8. Although the Plaintiff properly and appropriately responded to the Defendants First Set
 14 of Admissions in April of 2009, Mr. Murphy continued to behave in his usual overly adversarial
 15 and aggressive manner. After carefully reviewing the requests for Admissions with my assistance,
 16 Ms. Bowers rightfully denied several Admissions and the rest were admitted. When Mr. Murphy
 17 received the responses he took issue with the fact that Ms. Bowers would deny any of his
 18 admissions. I advised Mr. Murphy that the denials were appropriate and that we stood behind the
 19 responses. As a matter of fact I reviewed them today and find that Ms. Bowers' responses,
 20 including the denials are appropriate.

21 9. Mr. Murphy's December 3, 2009 Motion to Stay Discovery was not based on my actions.
 22 On December 1, 2009 I agreed to Stay discovery and extend deadlines relating to experts, so the
 23 motion was not based on my actions. When Mr. Murphy contacted me about in late December
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LAW OFFICE OF GREGORY P.
CAVAGNARO

1 2009 about an expert witness he advised me that he had not hired an expert. I advised him that we
2 were going to meet with a potential expert the following week and would inform him when we
3 retained one. At that time, the deadline had not passed for retaining an expert. Instead of asking for
4 an extension of the deadline concerning an expert witness, Mr. Murphy wrote a letter to the Court
5 and asked for a conference which we had. The time spent was not based on my actions or
6 omissions, since I fully disclosed my intentions to Mr. Murphy and was willing and did agree to
7 move back the deadlines with respect to an expert in the case. Both in January and February 2009,
8 Mr. Murphy continued to spend enormous amounts of time drafting motions to sanction the
9 plaintiff, dismiss the case and other relief. He never scheduled or conducted a deposition; filed a
10 Summary Judgment motion; or took other actions to litigate the issues in the case. He was intent on
11 spending both unreasonable and by any standard enormous amounts of time and energy seeking to
12 punish the Plaintiff for her written discovery responses, notwithstanding the fact that the responses
13 were fully provided, with the exception of two years of Plaintiff's tax returns. Mr. Murphy simply
14 didn't like the responses and was hell bent on getting different answers to his questions.

17 10. I ask the court to carefully review Exhibit A to this Declaration and review the
18 individual time entries allegedly by Mr. Murphy. There are many activities listed on those entries
19 including the review of the file, emails and calls to the Defendants, review of documents and other
20 activates. Yet the defendant clumps the entries together, arbitrarily and then decide how much time
21 Mr. Murphy spent on an activity and provides the "total Charges" on page 2 of Exhibit A attached
22 to Defendant's Declaration. The Court simply cannot rely on the defendant's guess work and
23 should attribute a minimum amount of time for "unnecessary" work by Mr. Murphy which is
24 attributable to my actions. I truly believe that Mr. Murphy engaged in an enormous amount of
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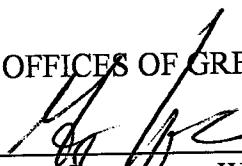
1 unnecessary work, however, I do not believe that much of it had to do with me. Rather, Mr.
2 Murphy was overly aggressive, adversarial and seemed to bill this case unnecessarily most of the
3 time, regardless of whether or not my actions were involved. I take issue with Mr. Murphy's hourly
4 billing rate of \$330.00 per hour and believe that it is unreasonably high. We do not have a
5 declaration from Mr. Murphy authenticating this unusually high hourly rate. We do not have
6 evidence from him indicating that \$330.00 is his usual and customary hourly rate or what special
7 qualifications he has to charge such an hourly. My own hourly rate is customarily \$200.00 per
8 hour. Likewise, Mr. Murphy's legal assistant charges \$140.00 per hour. This is also an unusually
9 high hourly rate for an individual who is not an attorney.

10. The Defendants are seeking the sum of \$58,654.00 in alleged charges which they
11 attribute to my actions. Should the court award such a sum, which I believe would be unreasonable,
12 I do not have the financial ability to pay such an amount and do not possess assets sufficient to pay
13 such amount. What ever sum of sanction the court may decide is just and reasonable, I ask that the
14 court allow sufficient time (6 to 9 months) or preferably a payment option so that I can pay such
15 sums and maintain my present monthly obligations. I believe that a sanction in the range of \$3,000
16 to \$4,000 is both sufficient and appropriate in this case.

17. I want to apologize to the Court, Ms. Bowers and others involved for my failings in
18 this case. Although I believe that Mr. Murphy made this case an intolerable and unnecessarily
19 difficult case to be involved in, I accept full responsibility for my actions and omissions.

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Gregory P. Cavagnaro, WSBA No. 17644
Counsel for Plaintiff

CERTIFICATE OF SERVICE

1. I hereby certify that on the 28th day of March, 2010 I electronically filed the document
10 listed below with the Clerk of the Court using the CM/ECF system which will send notification of
11 such filing to the following:

14 Mark Walters, WSBA 25537
15 1411 Fourth Avenue, Suite 75
16 Seattle, WA 98101
mark@walterslawfirm.com

Robin Cohen and Robin Kletke
16820 226th Ave N.E.
Woodinville, WA 98077
robinkletke@hotmail.com

DOCUMENTS FILED

- 20 1. Declaration of Gregory P. Cavagnaro In Opposition To Monetary Sanctions;
21 2. Exhibit A and B to the Declaration of Gregory P. Cavagnaro In Opposition To Monetary
22 Sanctions
23 2. Memorandum of Gregory P. Cavagnaro In Opposition To Defendants Motion For
24 Monetary Sanctions;

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Gregory P. Cavagnaro, WSBA No. 17644
Counsel for Plaintiff

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